

1 ELLEN M. MAHAN  
Deputy Section Chief  
2 ANDREW W. INGERSOLL  
Trial Attorney  
3 Environmental Enforcement Section  
Environment and Natural Resources Division  
4 United States Department of Justice  
P.O. BOX 7611  
5 Washington, DC 20044-7611  
Telephone: (202) 305-0312

6 ALICIA LIMTIACO  
United States Attorney  
7 MIKEL W. SCHWAB  
Assistant United States Attorney  
8 Sirena Plaza, Suite 500  
9 108 Hernan Cortez Avenue  
Hagatna, Guam 96910  
10 Telephone: (671) 472-7332

11 Attorneys for Plaintiff United States of America

12  
13 IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTHERN MARIANA ISLANDS

14 UNITED STATES OF AMERICA, )  
15 )  
Plaintiff, )  
16 v. )  
17 MARIANA ACQUISITION CORPORATION, )  
18 Defendant. )  
19 \_\_\_\_\_ )

**CV 11-0006**

CIVIL ACTION NO.

CONSENT DECREE

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1 Plaintiff United States of America, on behalf of the United States Environmental  
2 Protection Agency ("EPA"), has filed a complaint in this action concurrently with this Consent  
3 Decree, alleging that Defendant Mariana Acquisition Corporation, violated Section 111 of the  
4 Clean Air Act ("Act"), 42 U.S.C. § 7411.

5 The Complaint alleges that Defendant is liable under Section 113(b) of the Act, 42  
6 U.S.C. § 7413(b), for injunctive relief and the assessment of civil penalties for violations of the  
7 Act, and the regulations promulgated thereunder, at its bulk gasoline terminal located in Saipan.

8 Defendant does not admit any liability to the United States arising out of the transactions  
9 or occurrences alleged in the Complaint and does not admit any issues of law or fact related to or  
10 arising from the matters alleged in the Complaint, except as set forth in Section I (Jurisdiction  
11 and Venue) and in Paragraphs 4 and 5 in Section II (Applicability) of this Consent Decree. By  
12 entering into this Consent Decree and complying with its terms, Defendant does not admit any  
13 inference of wrongdoing that could be used against Defendant in any other proceeding with any  
14 party not a signatory to this Consent Decree.

15 The Parties recognize, and the Court by entering this Consent Decree finds, that this  
16 Consent Decree has been negotiated by the Parties in good faith and will avoid litigation  
17 between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

18 NOW, THEREFORE, before the taking of any testimony, without the adjudication or  
19 admission of any issue of fact or law except as provided in Section I, and with the consent of the  
20 Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

21 **I. JURISDICTION AND VENUE**

22 1. This Court has jurisdiction over the subject matter of this action, pursuant to  
23 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and  
24 over the Parties. Venue lies in this District pursuant to Section 113(b) of the Act, 42 U.S.C.  
25 § 7413(b), and 28 U.S.C. §§ 1391(b) and (c), and 1395(a), because the violations alleged in the  
26 Complaint have occurred and are occurring in this judicial district, or Defendant conducts  
27

1 business in this judicial district. For purposes of this Decree, or any action to enforce this  
2 Decree, Defendant consents to the Court's jurisdiction over this Decree, any such action, and  
3 over Defendant, and consents to venue in this judicial district.

4 2. For purposes of this Consent Decree, Defendant agrees that the Complaint states  
5 claims upon which relief may be granted pursuant to Section 113(b) of the Act, 42 U.S.C.  
6 § 7413(b).

7 3. Notice of the commencement of this action has been given to the Commonwealth  
8 of the Northern Mariana Islands Division of Environmental Quality in accordance with Section  
9 113(b) of the Act, 42 U.S.C. § 7413(b).

## 10 II. APPLICABILITY

11 4. The obligations of this Consent Decree apply to and are binding upon the United  
12 States, and upon Defendant and any successors, assigns, or other entities or persons otherwise  
13 bound by law.

14 5. No transfer of ownership or operation of the Facility, whether in compliance with  
15 the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure  
16 that the terms of the Decree are implemented. At least 30 Days prior to any such transfer,  
17 Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall  
18 simultaneously provide written notice of the prospective transfer, together with a copy of the  
19 proposed written agreement provided pursuant to a protective order if requested by Defendant, to  
20 EPA and the United States, in accordance with Section XIII (Notices) of this Decree. Any  
21 attempt to transfer ownership or operation of the Facility without complying with this Paragraph  
22 constitutes a violation of this Decree.

23 6. Defendant shall provide a copy of this Consent Decree to all officers, employees,  
24 and agents whose duties might reasonably include compliance with any provision of this Decree,  
25 as well as to any contractor retained to perform work required under this Consent Decree.

26 7. In any action to enforce this Consent Decree, Defendant shall not raise as a  
27

1 defense the failure by any of its officers, directors, employees, agents, or contractors to take any  
2 actions necessary to comply with the provisions of this Consent Decree.

3 **III. DEFINITIONS**

4 8. Terms used in this Consent Decree that are defined in the Act or in regulations  
5 promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such  
6 regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are  
7 used in this Consent Decree, the following definitions shall apply:

8 a. "Act" shall mean the Clean Air Act, as amended, 42 U.S.C. §§ 7401-  
9 7671q;

10 b. "C.F.R." shall mean the Code of Federal Regulations;

11 c. "Complaint" shall mean the complaint filed by the United States in this  
12 action;

13 d. "Consent Decree" or "Decree" shall mean this Decree;

14 e. "Day" shall mean a calendar day unless expressly stated to be a business  
15 day. In computing any period of time under this Consent Decree, where the last day would fall  
16 on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the  
17 next business day;

18 f. "Defendant" shall mean Mariana Acquisition Corporation, and includes  
19 any successors or assigns;

20 g. "Effective Date" shall have the definition provided in Section XIV;

21 h. "EPA" shall mean the United States Environmental Protection Agency  
22 and any of its successor departments or agencies;

23 i. "Facility" shall mean Defendant's bulk gasoline terminal, currently  
24 referred to as the Mariana Acquisition Corporation Puerto Rico Terminal, located on Industrial  
25 Drive in Puerto Rico, Saipan;

26 j. "Lodging" or "Date of Lodging" shall mean the date on which the  
27 Plaintiff lodges this Consent Decree with the United States District Court for the purpose of

1 seeking public comment on the Consent Decree;

2 k. "NSPS A and XX" shall mean the requirements of 40 C.F.R. Part 60,  
3 Subpart XX, as well as the applicable requirements of 40 C.F.R. Part 60, Subpart A;

4 l. "Paragraph" shall mean a portion of this Decree identified by an Arabic  
5 numeral;

6 m. "Parties" shall mean the United States and Defendant;

7 n. "Plaintiff" shall mean the United States;

8 o. "Section" shall mean a portion of this Decree identified by an upper-case  
9 Roman numeral;

10 p. "United States" shall mean the United States of America, acting on behalf  
11 of EPA; and,

12 q. "VOC" shall mean volatile organic compounds.

#### 13 IV. CIVIL PENALTY

14 9. Within 30 Days after the Effective Date of this Consent Decree, Defendant shall  
15 pay the sum of \$826,000 as a civil penalty.

16 10. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer  
17 ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided  
18 to Defendant, following the Effective Date, by the Financial Litigation Unit of the U.S.  
19 Attorney's Office for the District of Guam, 108 Hernan Cortez Avenue, Hagatna, Guam 96910,  
20 Tel: (671) 472-7332. At the time of payment, Defendant shall send a copy of the EFT  
21 authorization form and the EFT transaction record, together with a transmittal letter, which shall  
22 state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United*  
23 *States v. Mariana Acquisition Corporation*, and shall reference the civil action number and DOJ  
24 case number 90-5-2-1-09869, to the United States in accordance with Section XIII (Notices) of  
25 this Decree; by e-mail to [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov); or by mail to:

26 EPA Cincinnati Finance Office  
27 26 Martin Luther King Drive  
28 Cincinnati, Ohio 45268



1 limited to, the installation of a vapor collection system and the completion of performance tests).  
2 Notwithstanding this deadline, Defendant shall undertake best efforts to install a vapor collection  
3 system on the loading racks at the Facility as soon as practicable.

4 13. Additional Facility-Wide Requirements. No later than thirty months after the  
5 Effective Date:

6 a. The Facility shall comply with all other applicable requirements of NSPS  
7 A and XX not specifically referenced in Paragraph 12 above at the Facility (including, but not  
8 limited to, tank truck requirements);

9 b. Defendant shall provide EPA, in accordance with Section XIII (Notices)  
10 of this Decree and Paragraph 18 of this Decree, a written certification that the Facility, including  
11 all of the loading racks at the Facility, is in compliance with the requirements of NSPS A and  
12 XX.

13 14. Permits. Where any compliance obligation under this Section requires Defendant  
14 to obtain a federal, state, or local permit or approval, Defendant shall submit timely and  
15 complete applications and take all other actions necessary to obtain all such permits or  
16 approvals. Defendant may seek relief under the provisions of Section VIII (Force Majeure) of  
17 this Consent Decree for any delay in the performance of any such obligation resulting from a  
18 failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such  
19 obligation, if Defendant has submitted timely and complete applications and has taken all other  
20 actions necessary to obtain all such permits or approvals.

#### 21 VI. REPORTING REQUIREMENTS

22 15. Defendant shall submit the following reports:

23 a. Within 30 Days after the end of each calendar-year half (i.e., by July 30  
24 and January 30) after the Effective Date of this Consent Decree, until termination of this Decree  
25 pursuant to Section XVII, Defendant shall submit a semi-annual report for the preceding  
26 calendar-year half that shall include the status of any constructions or compliance measures;  
27 completion of milestones; problems encountered or anticipated, together with implemented or  
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1 proposed solutions; and status of permit applications. Each semi-annual report shall also include  
2 a description of any noncompliance with the requirements of this Consent Decree and an  
3 explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to  
4 prevent or minimize such violation.

5           b.       If Defendant violates, or has reason to believe that it may violate, any  
6 requirement of this Consent Decree, Defendant shall notify the United States of such violation  
7 and its likely duration, in writing, within ten working Days of the Day Defendant first becomes  
8 aware of the violation, with an explanation of the violation's likely cause and of the remedial  
9 steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation  
10 cannot be fully explained at the time the report is due, Defendant shall so state in the report.  
11 Defendant shall investigate the cause of the violation and shall then submit an amendment to the  
12 report, including a full explanation of the cause of the violation, within 30 Days of the Day  
13 Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the  
14 following Paragraph relieves Defendant of its obligation to provide the notice required by  
15 Section VIII (Force Majeure) of this Consent Decree.

16           c.       Each semi-annual report shall also include as an attachment a copy of each  
17 NSPS notification or report regarding the Facility that the Defendant submitted to EPA or to the  
18 delegated local agency during the reporting period (i.e., the preceding calendar-year half).

19           d.       Each semi-annual report shall also include as an attachment the Facility's  
20 actual daily gasoline throughput for each day of the preceding reporting period, along with a  
21 description of the method used to determine the actual gasoline throughput.

22           e.       The first semi-annual report shall include estimates of the Facility's (i)  
23 current potential to emit VOC, and (ii) projected potential to emit VOC after compliance with  
24 NSPS Subparts A and XX is achieved. Potential to emit shall mean the maximum capacity of  
25 the Facility (which includes all VOC-emission sources, not just loading racks) to emit VOC  
26 emissions under its physical and operational design. Defendant shall briefly describe any  
27 physical or operational design that limits the Facility's potential to emit. Defendant shall include  
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1 all calculations and assumptions used in developing these estimates, including but not limited to,  
2 all inputs used to run any emission calculating software programs. Defendant shall also describe  
3 which of these VOC emissions are fugitive (i.e., emissions that cannot reasonably pass through a  
4 stack, chimney, vent, or other functionally equivalent opening) and briefly explain why  
5 Defendant believes such VOC emissions are fugitive.

6 f. Each semi-annual report that addresses the second calendar half (i.e., the  
7 report due by January 30) shall include the Facility's actual annual emissions of VOC (which  
8 includes all VOC-emission sources, not just loading racks) for the entire calendar year.

9 Defendant shall include all calculations and assumptions used in developing the actual annual  
10 emissions, including but not limited to, all inputs used to run any emission calculating software  
11 programs. Defendant shall also describe which of these VOC emissions are fugitive (i.e.,  
12 emissions that cannot reasonably pass through a stack, chimney, vent, or other functionally  
13 equivalent opening) and briefly explain why Defendant believes such VOC emissions are  
14 fugitive.

15 16. Whenever any violation of this Consent Decree or any other event affecting  
16 Defendant's performance under this Decree, or the performance of its Facility, may pose an  
17 immediate threat to the public health or welfare or the environment, Defendant shall notify EPA  
18 orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours  
19 after Defendant first knew of the violation or event. This procedure is in addition to the  
20 requirements set forth in the preceding Paragraph.

21 17. All reports shall be submitted to the persons designated in Section XIII (Notices)  
22 of this Consent Decree.

23 18. Each report submitted by Defendant under this Section shall be signed by an  
24 official of the Defendant and include the following certification:

25 I certify under penalty of law that this document and all attachments were  
26 prepared under my direction or supervision in accordance with a system designed  
27 to assure that qualified personnel properly gather and evaluate the information  
28 submitted. Based on my inquiry of the person or persons who manage the system,  
or those persons directly responsible for gathering the information, the

1 information submitted is, to the best of my knowledge and belief, true, accurate,  
2 and complete. I am aware that there are significant penalties for submitting false  
3 information, including the possibility of fine and imprisonment for knowing  
4 violations.

5 This certification requirement does not apply to emergency or similar notifications where  
6 compliance would be impractical.

7 19. The reporting requirements of this Consent Decree do not relieve Defendant of  
8 any reporting obligations required by the Act or implementing regulations, or by any other  
9 federal, state, or local law, regulation, permit, or other requirement.

10 20. Any information provided pursuant to this Consent Decree may be used by the  
11 United States in any proceeding to enforce the provisions of this Consent Decree and as  
12 otherwise permitted by law.

#### 13 VII. STIPULATED PENALTIES

14 21. Defendant shall be liable for stipulated penalties to the United States for  
15 violations of this Consent Decree as specified below, unless excused under Section VIII (Force  
16 Majeure). A violation includes failing to perform any obligation required by the terms of this  
17 Decree, including any work approved under this Decree, according to all applicable requirements  
18 of this Decree and within the specified time established by or approved under this Decree.

19 22. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required  
20 to be paid under Section IV (Civil Penalty) of this Decree when due, Defendant shall pay a  
21 stipulated penalty of \$5,000 per Day for each Day that the payment is late.

22 23. Failure to Comply with Section V.

23 a. With the exception of Paragraph 12.a and the notification and reporting  
24 requirements subject to Paragraph 24 below, the following stipulated penalties shall accrue per  
25 violation per Day for each violation of a requirement of Paragraphs 12, 13, or 14, including, but  
26 not limited to, any requirement of NSPS A or NSPS XX applicable to Defendant's Facility or  
27 loading racks in accordance with the schedule set forth in Section V (Compliance  
28 Requirements):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 3,000	1st through 14th Day
\$ 6,000	15th through 30th Day
\$ 15,000	31st Day and beyond.

b. Stipulated penalties of \$15,000 per Day shall accrue per violation per Day for each violation of a requirement of Paragraph 12.a.

24. Failure to Comply with the Notification or Reporting Requirements of Section V or Section VI. The following stipulated penalties shall accrue per violation per Day for each violation of: (i) the notification or reporting requirements of Paragraphs 12, 13, or 14, including, but not limited to, any notification or reporting requirements of NSPS A or NSPS XX applicable to Defendant's Facility or loading racks in accordance with the schedule set forth in Section V (Compliance Requirements); or (ii) the notification or reporting requirements of Section VI (Reporting Requirements) of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,000	1st through 14th Day
\$ 2,500	15th through 30th Day
\$ 5,000	31st Day and beyond.

25. Other Consent Decree Requirements. If Defendant fails to comply with any other requirement of this Consent Decree not specifically referenced in Paragraphs 23 or 24 above, Defendant shall pay a stipulated penalty of \$1,000 per violation per Day for each violation of this Consent Decree.

26. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

27. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand. Stipulated penalties shall accrue regardless of whether the United States

1 has notified Defendant of a violation of the Consent Decree or issued a written demand for the  
2 payment of stipulated penalties.

3 28. The United States may, in the unreviewable exercise of its discretion, reduce or  
4 waive stipulated penalties otherwise due it under this Consent Decree.

5 29. Stipulated penalties shall continue to accrue as provided in Paragraph 26, during  
6 any Dispute Resolution, but need not be paid until the following:

7 a. If the dispute is resolved by agreement or by a decision of EPA that is not  
8 appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together  
9 with any interest accruing from 30 days following the United States' initial demand, to the  
10 United States within 30 Days of the effective date of the agreement or the receipt of EPA's  
11 decision or order.

12 b. If the dispute is appealed to the Court and the United States prevails in  
13 whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing,  
14 together with any interest accruing from 30 days following the United States' initial demand,  
15 within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c.,  
16 below.

17 c. If any Party appeals the District Court's decision, Defendant shall pay all  
18 accrued penalties determined to be owing, together with any interest accruing from 30 days  
19 following the United States' initial demand, within 15 Days of receiving the final appellate court  
20 decision.

21 d. No stipulated penalties shall accrue or be assessed and no stipulated  
22 penalties shall be due and owing for a disputed violation if Defendant prevails on the disputed  
23 violation that is the subject of the Dispute Resolution.

24 30. Defendant shall pay stipulated penalties owing to the United States in the manner  
25 set forth and with the confirmation notices required by Paragraph 10, except that the transmittal  
26 letter shall state that the payment is for stipulated penalties and shall state for which violation(s)  
27 the penalties are being paid.



1 anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the  
2 delay; a schedule for implementation of any measures to be taken to prevent or mitigate the  
3 delay or the effect of the delay; Defendant's rationale for attributing such delay to a Force  
4 Majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of  
5 Defendant, such event may cause or contribute to an endangerment to public health, welfare or  
6 the environment. Defendant shall include with any notice all available documentation  
7 supporting the claim that the delay was attributable to a Force Majeure event. Failure to comply  
8 with the above requirements shall preclude Defendant from asserting any claim of Force Majeure  
9 for that event for the period of time of such failure to comply, and for any additional delay  
10 caused by such failure. Defendant shall be deemed to know of any circumstance of which  
11 Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have  
12 known.

13 35. If EPA agrees that the delay or anticipated delay is attributable to a Force Majeure  
14 event, the time for performance of the obligations under this Consent Decree that are affected by  
15 the Force Majeure event will be extended by EPA for such time as is necessary to complete  
16 those obligations. An extension of the time for performance of the obligations affected by the  
17 Force Majeure event shall not, of itself, extend the time for performance of any other obligation.  
18 EPA will notify Defendant in writing of the length of the extension, if any, for performance of  
19 the obligations affected by the Force Majeure event.

20 36. If EPA does not agree that the delay or anticipated delay has been or will be  
21 caused by a Force Majeure event, EPA will notify Defendant in writing of its decision.

22 37. If Defendant elects to invoke the dispute resolution procedures set forth in Section  
23 IX (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In  
24 any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of  
25 the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure  
26 event, that the duration of the delay or the extension sought was or will be warranted under the  
27 circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and  
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1 that Defendant complied with the requirements of Paragraphs 33 and 34, above. If Defendant  
2 carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the  
3 affected obligation of this Consent Decree identified to EPA and the Court.

#### 4 IX. DISPUTE RESOLUTION

5 38. Unless otherwise expressly provided for in this Consent Decree, the dispute  
6 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes  
7 arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a  
8 dispute under this Section shall preclude Defendant from raising any such issue as a defense to  
9 an action by the United States to enforce any obligation of Defendant arising under this Decree.

10 39. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under  
11 this Consent Decree shall first be the subject of informal negotiations. The dispute shall be  
12 considered to have arisen when Defendant sends the United States a written Notice of Dispute.  
13 Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotia-  
14 tions shall not exceed 20 Days from the date the dispute arises, unless that period is modified by  
15 written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the  
16 position advanced by the United States shall be considered binding unless, within 20 Days after  
17 the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution  
18 procedures as set forth below.

19 40. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution  
20 procedures, within the time period provided in the preceding Paragraph, by serving on the United  
21 States a written Statement of Position regarding the matter in dispute. The Statement of Position  
22 shall include, but need not be limited to, any factual data, analysis, or opinion supporting  
23 Defendant's position and any supporting documentation relied upon by Defendant.

24 41. The United States shall serve its Statement of Position within 45 Days of receipt  
25 of Defendant's Statement of Position. The United States' Statement of Position shall include,  
26 but need not be limited to, any factual data, analysis, or opinion supporting that position and any  
27 supporting documentation relied upon by the United States. The United States' Statement of  
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1 Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the  
2 dispute in accordance with the following Paragraph.

3 42. Defendant may seek judicial review of the dispute by filing with the Court and  
4 serving on the United States, in accordance with Section XIII (Notices) of this Consent Decree, a  
5 motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of  
6 receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The  
7 motion shall contain a written statement of Defendant's position on the matter in dispute,  
8 including any supporting factual data, analysis, opinion, or documentation, and shall set forth the  
9 relief requested and any schedule within which the dispute must be resolved for orderly  
10 implementation of the Consent Decree.

11 43. The United States shall respond to Defendant's motion within the time period  
12 allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent  
13 permitted by the Local Rules.

14 44. Standard of Review

15 a. Disputes Concerning Matters Accorded Record Review. Except as  
16 otherwise provided in this Consent Decree, in any dispute brought under Paragraph 40 pertaining  
17 to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any  
18 other items requiring approval by EPA under this Consent Decree; the adequacy of the  
19 performance of work undertaken pursuant to this Consent Decree; and all other disputes that are  
20 accorded review on the administrative record under applicable principles of administrative law,  
21 Defendant shall have the burden of demonstrating, based on the administrative record, that the  
22 position of the United States is arbitrary and capricious or otherwise not in accordance with law.

23 b. Other Disputes. Except as otherwise provided in this Consent Decree, in  
24 any other dispute brought under Paragraph 40, including but not limited to a claim of Force  
25 Majeure event as specified in Paragraph 37, Defendant shall bear the burden of demonstrating  
26 that its position complies with this Consent Decree and better furthers the objectives of the  
27 Consent Decree.

1           45.     The invocation of dispute resolution procedures under this Section shall not, by  
2 itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent  
3 Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with  
4 respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but  
5 payment shall be stayed pending resolution of the dispute as provided in Paragraph 29. If  
6 Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid  
7 as provided in Section VII (Stipulated Penalties). If Defendant prevails on a disputed violation  
8 that is the subject of the Dispute Resolution, no stipulated penalties shall accrue, be assessed, or  
9 be due and owing for that disputed violation.

10                                   X. INFORMATION COLLECTION AND RETENTION

11           46.     The United States and its representatives, including attorneys, contractors, and  
12 consultants, shall have the right of entry into the Facility covered by this Consent Decree, at all  
13 reasonable times, upon presentation of credentials, to:

- 14                   a.     monitor the progress of activities required under this Consent Decree;
- 15                   b.     verify any data or information submitted to the United States in  
16 accordance with the terms of this Consent Decree;
- 17                   c.     obtain samples and, upon request, splits of any samples taken by  
18 Defendant or its representatives, contractors, or consultants, to confirm compliance with this  
19 Consent Decree;
- 20                   d.     obtain documentary evidence, including photographs and similar data to  
21 confirm compliance with this Consent Decree; and,
- 22                   e.     assess Defendant's compliance with this Consent Decree, the Act, and the  
23 regulations promulgated thereunder.

24           47.     Upon request, Defendant shall provide EPA or its authorized representatives  
25 splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of  
26 any samples taken by EPA.

27           48.     Until five years after the termination of this Consent Decree, Defendant shall  
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1 retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all  
2 documents, records, or other information (including documents, records, or other information in  
3 electronic form) in its or its contractors' or agents' possession or control, or that come into its or  
4 its contractors' or agents' possession or control, and that relate in any manner to Defendant's  
5 performance of its obligations under this Consent Decree. This information-retention  
6 requirement shall apply regardless of any contrary corporate or institutional policies or  
7 procedures. At any time prior to termination of this Consent Decree, upon request by the United  
8 States, Defendant shall provide copies of any documents, records, or other information required  
9 to be maintained under this Paragraph.

10 49. Defendant shall notify the United States at least 60 Days prior to the destruction  
11 of any documents, records, or other information subject to the requirements of the preceding  
12 Paragraph and, upon request by the United States, Defendant shall deliver any such documents,  
13 records, or other information to EPA.

14 50. Defendant may assert that certain documents, records, or other information is  
15 privileged under the attorney-client privilege or any other privilege recognized by federal law. If  
16 Defendant asserts such a privilege, it shall provide the following: (1) the title of the document,  
17 record, or information; (2) the date of the document, record, or information; (3) the name and  
18 title of each author of the document, record, or information; (4) the name and title of each  
19 addressee and recipient; (5) a description of the subject of the document, record, or information;  
20 and (6) the privilege asserted by Defendant. However, no documents, records, or other  
21 information created or generated pursuant to the requirements of this Consent Decree shall be  
22 withheld on grounds of privilege.

23 51. Defendant may also assert that information required to be provided under this  
24 Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to  
25 any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures  
26 set forth in 40 C.F.R. Part 2.

27 52. This Consent Decree in no way limits or affects any right of entry and inspection,  
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1 or any right to obtain information, held by the United States pursuant to applicable federal laws,  
2 regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain  
3 documents, records, or other information imposed by applicable federal or state laws,  
4 regulations, or permits.

5 XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

6 53. This Consent Decree resolves the civil claims of the United States for the  
7 violations alleged in the Complaint filed in this action through the Date of Lodging, including  
8 claims for injunctive relief.

9 54. The United States reserves all legal and equitable remedies available to enforce  
10 the provisions of this Consent Decree, except as expressly stated in Paragraph 53. This Consent  
11 Decree shall not be construed to limit the rights of the United States to obtain penalties or  
12 injunctive relief under the Act or implementing regulations, or under other federal laws,  
13 regulations, or permit conditions, except as expressly specified in Paragraph 53. The United  
14 States further reserves all legal and equitable remedies to address any imminent and substantial  
15 endangerment to the public health or welfare or the environment arising at, or posed by,  
16 Defendant's Facility, whether related to the violations addressed in this Consent Decree or  
17 otherwise. Furthermore, nothing in this Consent Decree is intended to nor shall be construed to  
18 operate in any way to resolve any criminal liability.

19 55. In any subsequent administrative or judicial proceeding initiated by the United  
20 States for injunctive relief, civil penalties, other appropriate relief relating to the Facility,  
21 Defendant shall not assert, and may not maintain, any defense or claim based upon the principles  
22 of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or  
23 other defenses based upon any contention that the claims raised by the United States in the  
24 subsequent proceeding were or should have been brought in the instant case, except with respect  
25 to claims that have been specifically resolved pursuant to Paragraph 53 of this Section.

26 56. This Consent Decree is not a permit, or a modification of any permit, under any  
27 federal, State, or local laws or regulations. Defendant is responsible for achieving and  
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1 maintaining complete compliance with all applicable federal, State, and local laws, regulations,  
2 and permits; and Defendant's compliance with this Consent Decree shall be no defense to any  
3 action commenced pursuant to any such laws, regulations, or permits, except as set forth herein.  
4 The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in  
5 any manner that Defendant's compliance with any aspect of this Consent Decree will result in  
6 compliance with provisions of the Act or with any other provisions of federal, State, or local  
7 laws, regulations, or permits.

8 57. This Consent Decree does not limit or affect the rights of Defendant or of the  
9 United States against any third parties, not party to this Consent Decree, nor does it limit the  
10 rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise  
11 provided by law.

12 58. This Consent Decree shall not be construed to create rights in, or grant any cause  
13 of action to, any third party not party to this Consent Decree.

#### 14 XII. COSTS

15 59. The Parties shall bear their own costs of this action, including attorneys' fees,  
16 except that:

17 a. The United States shall be entitled to collect the costs (including  
18 attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty;

19 b. The United States shall be entitled to collect the costs (including  
20 attorneys' fees) incurred in any action for collection of stipulated penalties found by a court to be  
21 due and owing.

#### 22 XIII. NOTICES

23 60. Unless otherwise specified herein, whenever notifications, submissions, or  
24 communications are required by this Consent Decree, they shall be made in writing and shall be  
25 sent by certified mail, express mail, or similar overnight mail delivery with return receipt  
26 requested, and addressed as follows:

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To the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 2044-7611  
Re: DOJ No. 90-5-2-1-09869

and

Thomas P. Mintz, ORC-2  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

To EPA:

Director, Air Division (AIR-1)  
Attn: Douglas McDaniel  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

and

Thomas P. Mintz, ORC-2  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

To Defendant:

Richard B. Behag  
Director of HSSE and Compliance  
IP&E Holdings, LLC (dba IP&E Guam)  
643 Chalan San Antonio, Suite 100,  
Tamuning, Guam 96913

with copies to:

Mr. Dennis Gamab  
Vice President - Operations  
Shell Company (Pacific Islands Limited)  
c/o Shell House, 156 Valero St.,  
Salcedo Village, Makati City, Philippines 1227

and

1 Lance Tolson  
2 Senior Legal Counsel  
3 One Shell Plaza, OSP 4874  
4 Houston, TX 77002

5 61. Any Party may, by written notice to the other Parties, change its designated notice  
6 recipient or notice address provided above.

7 62. Notices submitted pursuant to this Section shall be deemed submitted upon  
8 mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties  
9 in writing.

10 **XIV. EFFECTIVE DATE**

11 63. The Effective Date of this Consent Decree shall be the date upon which this  
12 Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted,  
13 whichever occurs first, as recorded on the Court's docket.

14 **XV. RETENTION OF JURISDICTION**

15 64. The Court shall retain jurisdiction over this case until termination of this Consent  
16 Decree, for the purpose of resolving disputes arising under this Decree or entering orders  
17 modifying this Decree, pursuant to Sections IX and XVI, or effectuating or enforcing compliance  
18 with the terms of this Decree.

19 **XVI. MODIFICATION**

20 65. The terms of this Consent Decree may be modified only by a subsequent written  
21 agreement signed by all the Parties. Where the modification constitutes a material change to this  
22 Decree, it shall be effective only upon approval by the Court.

23 66. Any disputes concerning modification of this Decree shall be resolved pursuant to  
24 Section IX (Dispute Resolution) of this Decree, provided, however, that, instead of the burden of  
25 proof provided by Paragraph 44, the Party seeking the modification bears the burden of  
26 demonstrating that it is entitled to the requested modification in accordance with Federal Rule of  
27 Civil Procedure 60(b).  
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XVII. TERMINATION

67. After Defendant (i) has completed the requirements of Section V (Compliance Requirements) of this Decree; and (ii) has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree and no penalties or other monetary obligations due under this Decree are outstanding or owed to the United States, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

68. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

69. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section IX of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 40 of Section IX, until 60 Days after service of their Request for Termination.

XVIII. PUBLIC PARTICIPATION

70. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.



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Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Rules 54 and 58 of the Federal Rules of Civil Procedure.

SO ORDERED.

Dated and entered this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
District Judge  
United States District Court  
District of the Northern Mariana Islands

1 FOR PLAINTIFF UNITED STATES OF AMERICA:

2  
3 3/8/2011 \_\_\_\_\_

4 Date

ELLEN M. MAHAN  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

5  
6  
7  
8 3/8/2011 \_\_\_\_\_

9 Date

10 ANDREW W. INGERSOLL  
Trial Attorney  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
Telephone: (202) 305-0312

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15 ALICIA LIMTIACO  
United States Attorney

16  
17 3-15-2011 \_\_\_\_\_

By:

18 Date

19 MIKEL W. SCHWAB  
Assistant United States Attorney  
Sirena Plaza, Suite 500  
108 Hernan Cortez Avenue  
Hagatna, Guam 96910  
Telephone: (671) 472-7332

1 FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

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2/24/11

Date

JARED BLUMENFELD  
Regional Administrator  
United States Environmental Protection Agency, Region 9

OF COUNSEL:

THOMAS P. MINTZ  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

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FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

2/28/11

Date

CYNTHIA J. GILES

CYNTHIA J. GILES  
Assistant Administrator for Enforcement  
and Compliance Assurance  
United States Environmental Protection Agency

1 FOR DEFENDANT MARIANA ACQUISITION CORPORATION:

2 12/02/10

3 Date

ELOY LIZAMA  
Executive Vice President and CEO

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